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DEPARTMENT FOR G/TIP, G, INL, DRL, PRM, EAP/MTS AND EAP/RSP

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SUBJECT: BRUNEI TIP REPORT

REF: 2006 STATE 202745

1. (SBU) Please find below Post's report in preparation for the annual Trafficking in Persons Report. Please note paragraph numbering is keyed to refTel questions:

OVERVIEW

1A. Brunei is not a major destination for trafficked persons, nor is it a source or transit country. However, Brunei is heavily dependent on foreign workers to perform much of the manual labor, as well as a significant amount of the high-skill work required to keep its economy functioning. GoB statistics indicate that 70, 763 foreign workers or 18% of the nation's population are currently legally resident in Brunei. Post's survey of primary labor source country embassies indicated the actual number of foreign workers may be as high as 100,000. The GoB statistics may not count the large number of Malaysian citizens resident in Malaysia who commute daily to legal jobs in Brunei or foreign nationals with permanent residence status. The following statistics provided to us by foreign missions reflect either the number of these countries' nationals formally registered or estimated to be working in Brunei:

Malaysia 43,000
Indonesia 36,000
Philippines 21,000
Thailand 9,000
Bangladesh 4,000.

Brunei authorities, social service agencies, and the embassies of potential source countries all believe that TIP, if it occurs at all in Brunei, is very infrequent and most likely occurs in the context of legal labor agreements not being honored by either the employer or employee. Such cases are prosecuted (or more often mediated) under the Labor Act. During the year the enforcement section of Department of Labor (DOL) recorded 72 complaints by domestic helpers and 288 complaints by corporate / garment workers against employers who failed to pay worker's salaries. Fortyone of the 72 complaints by domestic helpers were resolved through mediation, and 204 of the complaints by corporate / garment workers were resolved through mediation.

There are four pending cases of criminal prosecution for non-payment of salary.

There have been reports of Brunei being a destination of an unknown but small number of women for prostitution. The Embassy of Thailand told us that approximately 2-3 Thai national women were arrested

monthly in Brunei for prostitution. A small percentage of these women asserted that they had been trafficked to Brunei. However, a senior Thai Embassy official found almost all of these claims lacked credibility, noting that in one such case, she overheard one arrestee tell the other "I told you we should have gone to Hong Kong or Tokyo." Of all the embassies surveyed, only the Thai embassy reported one credible case of a woman recruited to work in a restaurant who was subsequently forced into prostitution.

¶B. Although the Trafficking and Smuggling Persons Order 2004 is in force, no case has been tried under this law. During the reporting period, the government investigated one case as a potential violation of anti-TIP law, but brought charges under the easier-to-prove Woman and Children's Act. The case was dropped when the victim chose not to testify and left the country.

Most trafficking related cases such as contract switching and non-payment salary are tried under Labor Act. A small country with a correspondingly small law enforcement community, GOB lacks internal expertise in addressing trafficking issues. In January 2007, the GOB joined the International Labor Organization (ILO) and plans to ratify some of the ILO's Conventions and Protocols, which reflects the GOB's political will to improve labor practices and address trafficking issues. Also under development is a revised 'Agencies Order' which calls for the screening of recruitment agencies to regulate potentially deceptive recruitment practices.

¶C. GOB officials, noting the very small number of potential trafficking cases, state that the lack of trained manpower is the main limitation on the GOB's ability to tackle trafficking issues.

¶D. The GOB has a national committee that addresses transnational crimes including trafficking, and has already in place the Trafficking and Person Smuggling Order 2004. The Immigration and National Registration Department monitors and screen movements of people entering and exiting the country, not limiting to evidence for trafficking in persons and trafficked victims.

PREVENTION:

¶A. While Brunei acknowledges that trafficking does occur and takes the issue seriously, it does not see trafficking as a significant problem. A conservative country with low rates of social crimes (including prostitution), Brunei officials and social service agencies simply do not have the case load to indicate that TIP is a serious problem.

¶B. The government agencies involved in anti-trafficking efforts are the Prime Minister's Office, the Ministry of Home Affairs; the Ministry of Foreign Affairs and Trade; the Internal Security Department; the Immigration and National Registration Department; the Royal Brunei Police Force; and the Department of Community Development. The lead agency is the Ministry of Home Affairs.

¶C. Brunei's Attorney General Chambers leads national efforts to educate law enforcement and social services agencies on the TIP Order. Training is conducted annually, but lack of staff has meant that such efforts are limited in scope.

¶D. During the reporting period, GoB officials participated in a workshop run by the Government of Japan on "Developing a Coordinated Inter Agency National Action Plan to Eradicate Trafficking in Persons" under the umbrella of the Bali Process on People Smuggling, Trafficking in Persons and related Transnational Crime aimed at enhancing capacity-building and skill development.

¶E. There are no NGOs or organizations specifically dealing with the trafficking in persons issue.

¶F. Immigration and law enforcement officials at Brunei's six major entry points screen arrivals and departures and are charged with enforcing anti-trafficking laws.

¶G. The National Committee on Transnational Crime (NCTC) under the Prime Minister's Office coordinates GOB efforts to combat

transnational crimes including trafficking and smuggling of persons.

It is chaired by a Permanent Secretary in the Prime Minister's Office and includes representatives from relevant government services. Brunei's Anti-Corruption Bureau is the enforcement agency for public corruption, which falls under the Prime Minister's Office.

¶H. Brunei committed under Bali Process as an ASEAN member to fulfil the Plan of Action regarding developing a work programme related to trafficking in persons. Following further interagency review, the GoB determined that given the very limited scope of trafficking in Brunei, current training and enforcement efforts were sufficient and that elements of a National Action Plan against TIP were adequately addressed in other interagency anti-crime initiatives (see G above).

INVESTIGATION AND PROSECUTION OF TRAFFICKERS:

¶A. Brunei enacted the Trafficking and Smuggling of Persons Order, 2004 in December 20, 2004 which specifically prohibits trafficking in persons - both for sexual and non-sexual purposes including forced labor. The Order applies to whether Brunei is the receiving, sending, or transit country.

The Children Order 2000 deals specifically with the offense of trafficking in children. Section 33 (1) of the Order provides that it is an offense to take any part in any transaction where a child is held against his / her will and controlled for any valuable consideration. The penalty is imprisonment, which may extend to seven years with ten strokes of the cane or to a fine not exceeding \$20,000 or both.

The Women and Girls Protection Act provides for protection of women and young girls by, inter alia, penalizing the act of knowing or associating in the practice of prostitution involving any woman or girl, or having reason to believe that such woman or girl will be employed or used in prostitution.

¶B. Under Section 6 - the offence of exploiting a trafficked person, where the term 'exploitation' is defined as all forms of sexual exploitation, stipulates that the exploitation of a trafficked person shall be guilty of an offense and liable on conviction to a fine not exceeding BND 1,000,000 (approx. USD660,000) imprisonment for a term of not less than 4 years but not exceeding 30 years and caning.

¶C. It is stipulated that any person who recruits or harbors any persons for the purpose of 'exploitation' - defined as including forced labor or involuntary servitude - by means of deception, abuse of power or of a position of vulnerability, is punishable under Section 4 of the Trafficking and Smuggling of Persons Order 2004, which carries a fine not exceeding BND 1,000,000 and imprisonment for a term of not less than 4 years but not exceeding 30 years and caning.

Investigations conducted by the Department of Labour have identified labor issues such as: placement in different jobs from those initially offered; salary deduction for recruitment fees; salary based on false promises; and high recruitment fees paid by the prospective employee. However, investigations did not go further to reveal the involvement of errant agencies in the labour-source countries. Labor Department officials told us that a new 'Agencies Order' to regulate labor recruitment agencies and their practices is under development and expected to be implemented in the coming year.

Non-payment of salary cases are tried under the Labor Act. Employers who fail to pay wages of their employees will be imposed with a BND1,500 fine or imprisonment for a term of 6 months.

¶D. Section 376 of the Penal Code calls for imprisonment of up to 30 years and caning for the offense of rape. Should the rape also cause harm, cause fear of death or hurt, or involve a minor less than 14 years old, the minimum penalty is eight years with a minimum of 12 strokes of the cane with the maximum penalty 30 years. Trafficking for commercial sexual exploitation, which falls under

the Section 4 provision of the Human and People Smuggling Order 2004, carries a fine not exceeding BND 1,000,000 and imprisonment for a term of not less than 4 years but not exceeding 30 years and caning.

¶E. Prostitution is illegal. Any individual who sells, lets to hire or otherwise disposes of or buys or hires or otherwise obtains possession of any woman or girl that shall be employed or used for the purpose of prostitution is liable to imprisonment of five years and a fine of BND20,000.

¶F. No prosecution has ever been conducted under the Trafficking and Smuggling of Persons Order 2004. The GOB reported that one investigation was conducted during the reporting period by the enforcement agencies into possible trafficking cases for which prosecution could have been instituted under the 2004 Order. Due to the difficulty in proving the trafficking offence under the 2004 Order, a decision was made to charge the perpetrators under the Women and Girls Protection Act, 1972. However, the victims were not co-operative and were unwilling to stay in the country during prosecution and the case was dropped.

In 2004, the Government passed an Employment Agencies Order 2004, which regulates activities of employment agency making them accountable and responsible for the recruited employees. Under the Order, the Commissioner of Labour may institute proceedings against any employment agencies who fail to comply with any provisions of this Order. Provisions of this order include that agencies may not: charge or receive any form of fee, remuneration, or profit; knowingly or voluntarily deceive any person by giving false information; place any person in any occupation injurious to the public interest; knowingly send any person to any place for immoral purposes; or transfers a license to any other person.

¶G. The Government of Brunei was unable to provide any documentation or investigative history of proven cases of trafficking. There have been no/no reports of government officials involved in trafficking.

¶H. The three enforcement agencies in Brunei Darussalam empowered to investigate alleged offences committed under the Trafficking and Smuggling Order 2004 are the Royal Brunei Police Force, the Immigration and National Registration Department and the Royal Customs and Excise Department.

The Immigration and National Registration Department actively conducts enforcement activities in the country (e.g. surveillance or raid-style operations). There were 236 immigration violation cases recorded in 2006, of which 99 cases were overstayers. To date, there were no arrests or prosecutions for trafficking offences under the Order.

¶I. The Attorney-General's Chambers periodically conducts seminars for the Immigration and National Registration Department on how to recognize trafficking cases.

¶J. To date, there have not been any requests from foreign governments for the Government of Brunei to cooperate in the prosecution of any trafficking case. GoB officials have indicated that they are fully prepared to cooperate with their counterparts should such a request be forthcoming.

¶K. Brunei has not received any request from any foreign country for the extradition of persons charged with trafficking offences. However, under the new Extradition Order 2006, taken together with the Trafficking and Smuggling of Persons Order 2004, the offence of trafficking in persons is deemed to be an extraditable offence. Under the Extradition Order 2006, Brunei would extradite persons charged with the trafficking offence if the extradition request is made by any of the listed Commonwealth country, a country with whom Brunei Darussalam has an extradition treaty, any other country designated under the Order, or any entity or country for the purpose of a particular extradition request.

¶L. No.

¶M. Not applicable.

¶N. Not applicable.

¶O. Brunei is neither a State party nor State signatory to any of the Conventions or Protocols mentioned reftel. However, Brunei became a member of the International Labor Organization (ILO) on 17 January 2007 and intends to become a party to and ratify portions of the ILO Convention in the near future.

Brunei is a State Party to the Convention on the Rights of the Child and a National Committee has been established to monitor and implement the obligations contained the said Convention. Brunei is considering accession to the Optional Protocol on the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography. Brunei has already put in place domestic legislation to criminalize trafficking in children through Women and Girls Protection Act; Penal Code; Immigration Act; Labour Act; Children Order 2000; and Trafficking and Smuggling in Persons Order ¶2004.

PROTECTION AND ASSISTANCE TO VICTIMS

¶A. The Children Order 2000 (Part VIII) deals with trafficking of children, which provides for taking into temporary custody by the police or social service agency children who are in need of protection. Children taken for temporary custody are placed in a place of safety and are to be examined by a medical officer, who may administer such procedures and tests as this may be necessary to diagnose the condition and thereafter to provide the necessary treatment.

The Women and Girls Protection Act 1972, can also be applied in the cases of women and girls trafficked for the purposes of employing or using them for prostitution or procured to have carnal connection by threats, intimidation or deceit. It provides for the maintenance of a place of safety and the provision for cost of care, maintenance and education of women and girls detained therein.

The country does not have a facility dedicated to trafficking per say but does have rehabilitation and protection centres (see point F below) that would take in trafficked victims.

¶B. The Trafficking and Smuggling of Persons Order 2004, provides for the setting up of a fund which can be used for purposes considered necessary by the Minister of Home Affairs to give effect or carry out the provisions of the Order.

¶C. Currently, there is no formal system of identifying victims of trafficking. Persons can be identified as in need of protective services under the Women and Girls Protection Act and the Children Order.

¶D. The rights of a child victim in the legal process are been safeguarded under the Children Order 2000. That Order prohibits the publication of any materials which reveal or tends to reveal the identity of the child (which under the act is defined as a person under the age of 18 years old).

Under the Criminal Procedure Code, a child victim under the age of 14 years at the time of the alleged offence (if the trafficking involves an assault, injury, or threat of injury or any sexual element), may be allowed to give evidence through live television link.

The Women and Girls Protection Act 1972, provides that (in the type of cases described above), the proceedings shall be held in camera and the names, identities or photographs of such women or girls shall not be published in any media.

Further, the Attorney-General's Chambers endeavour to ensure that victims of any offences, including trafficking offences are fully informed of the legal process, including informing them of the progress of the cases involving them.

¶E. Brunei police encourage victims to assist in investigation as a witness. The victims are permitted to obtain other employment in the country while pending trial proceedings. There is no known

victim restitution program.

¶F. The Department of Community Development provides rehabilitation and protection centres under the Women and Girls Protection Act 1972 and the Children Order 2000. The GoB operates four protection centers under these laws, three of which could be used for assisting trafficking victims. Taman Noor Hidayah 2 is a protection centre for children, teenagers, and women or wives who are victims of sexual abuse, family problems, neglect and for those who need protection including trafficked victims. The Darussakinah 1 is a protection home for boys below 18 years old under the Children Order 2000, who are victims of neglect, abandonment and for those who need protection (temporary shelter). Darussakinah 2 is a protection home for girls below 18 years old under the Children Order 2000, who are victims of neglect, abandonment and for those who need protection (temporary shelter).

The trafficked victims and witnesses will be given basic necessities such as food, uniform and safety in the shelter as well as counselling services. Emboffs have visited the Taman Noor facility during the reporting period and found conditions there Spartan but clean with well-trained, caring staff.

¶G. Some Government officials have attended the Bali Process Workshop on Human Trafficking: Victim Support held on 7 November 2006, in Bali, Indonesia.

The Department of Community Development has trained counsellors in giving counselling to victims to help in rehabilitating the morale of the trafficked victims who were involved in negative social activities; and to help trafficked victims to gain self-confidence, be responsible person to themselves, family, community, religion and country.

There is no formal training program run by the GoB for foreign embassies. Post surveyed the embassies of the top five source countries for legal labor in Brunei. Those embassies all reported very good cooperation with GoB authorities including police and the Labor department. Because Brunei is dependent on foreign labor and the sending countries derive significant revenue from remittances, all sides have an interest in ensuring labor codes are adhered to and any disputes are resolved quickly and fairly.

¶2. (U) Post's point of contact for trafficking issues is DCM Justin Friedman or FSN Political / Military Assistant, Siti M. Mahmud. Phone 673-222-9670 ext 2103 or 673-874-0687 or 673-223-1009 or MahmudSM@state.gov.

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